HONG KONG TAX

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HONG KONG DEFERS IMPLEMENTATION OF PILLAR TWO OF BEPS 2.0

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The Secretary for Financial Services and the Treasury Bureau in Hong Kong (FSTB), issued a letter on 15th August 2022 to notify various stakeholders that the Government of Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) will defer the implementation of the Global Minimum Effective Tax regime in HKSAR to 2024 at the earliest.

Background

In 2021, more than 130 countries (including HKSAR) in the Organization for Economic Co-operation and Development (OECD) /G20 Inclusive Framework on Base Erosion and Profit Shifting reached a landmark agreement on a two-pillar solution to address the tax challenges arising from digitalisation of the economy (referred to as BEPS 2.0)[1].

The OECD originally stated in October 2021 that the jurisdictions, which agreed to apply BEPS 2.0, were required to bring the global minimum effective tax into law in 2022 to be effective in 2023, with the Undertaxed Payment Rule (UTPR) coming into effect in 2024.

However, on 11 July 2022, OECD indicated that there is a delay in the implementation of Pillar Two, with most jurisdictions now planning for an entry into force of Pillar Two in 2024. Some key jurisdictions (eg the UK) has already deferred the implementation of Pillar Two to 2024.

Hong Kong SAR developments

Earlier in 2022, the Government had announced in the 2022-23 Budget, plans to submit a legislative proposal to the Legislative Council in the second half of 2022 to implement the global minimum tax rate and other relevant requirements to comply with OECD's original timeline. It also intended on introducing a domestic minimum top-up tax (DMT) starting from the year of assessment 2024/25 to ensure that the effective tax rates of in-scope MNEs reach the global minimum effective tax rate of 15%.

Considering an indication to defer the implementation of Pillar Two to 2024 from the OECD and based on an overwhelming feedback received from HKSAR's MNEs and business chambers, the FSTB concluded it may be best to defer Hong Kong's implementation of the Income Inclusion Rules (IIR) to 2024 at the earliest. This will likely mean the necessary legislative proposals will only be introduced to the Legislative Council in 2023 (rather than 2022 as originally planned).

The FSTB has not indicated any firm dates for implementation of the UTPR and the DMT.

BDO comments

The decision of the government to defer the implementation in HKSAR is a positive step for the in-scope MNEs. As highlighted by the stakeholders and business chambers, the implementation of the same in HKSAR ahead of other jurisdictions might put HKSAR MNEs in a disadvantaged position.

The FSTB confirmed that it will continue to monitor the global developments in this regard and will hold a consultation exercise towards the end of 2022 to understand from the stakeholders how best to translate the Implementation Framework[2] for the GloBE Rules under Pillar Two of BEPS 2.0 into domestic legislation in HKSAR. The FSTB has also assured the business community in HKSAR that it is determined to uphold the competitiveness of HKSAR's tax regime and will provide sufficient time for in-scope MNEs to take steps to ensure compliance with the new tax rules.

This step will further provide the in-scope MNEs with additional time to get ready for smooth implementation of the rules once they come into force. However, we recommend that MNEs immediately begin assessing their ability to meet these rules as they may have different areas to focus on, such as legal entity structure, data collation, process or system readiness and stakeholder management.

Notes:

[1] Under BEPS 2.0: Pillar One intends to ensure a fairer distribution of profits and taxing rights among countries with respect to the largest and most profitable MNEs while complying with the nexus rules; and Pillar Two intend to introduce Global Anti-Base Erosion (GloBE) rules to ensure Multi National Enterprises (MNEs) with consolidated annual revenues exceeding EUR 750 million pay a minimum (15%) level of tax on the income they derive from each jurisdiction in which they operate. Where the effective tax rate of an in-scope MNE in any of these jurisdictions is below the 15% minimum rate, it will have to pay a "top-up" tax to account for the difference. The top-up tax rate will be applied through the IIR and the UTPR

[2] Scheduled to be released by the OECD in later part of 2022

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